

COMMONWEALTH OF KENTUCKY  
BEFORE THE PUBLIC SERVICE COMMISSION

In the Matter of:

JOINT APPLICATION OF JEROME A. KANNEY	)	
AND DENNIS L. ROHRER FOR AUTHORIZATION	)	
OF THE ACQUISITION OF THE CORPORATE	)	CASE NO. 2005-00073
STOCK OF SIGMA GAS CORPORATION FROM	)	
ESTILL BRANHAM, BARKLEY STURGILL, AND	)	
RUTH CONLEY CLEMMONS	)	

ORDER

Jerome A. Kanney and Dennis L. Rohrer ("Joint Applicants") have petitioned for reconsideration or, in the alternative, for rehearing of the Commission's Order of April 29, 2005. Based upon the evidence contained in this petition, we grant the petition for rehearing and modify our earlier findings regarding the Joint Applicants' abilities to provide reasonable utility service. For reasons set forth below, we find that the Joint Applicants have still not demonstrated that the proposed transaction is in the public interest and, therefore, affirm our earlier Order denying Commission approval for the proposed transaction.

On February 9, 2005, the Joint Applicants applied for approval to acquire 100 percent of the corporate stock of Sigma Gas Corporation ("Sigma Gas"). On March 30, 2005, we extended the period to conduct our review from 60 days to 120 days. After conducting discovery and receiving objections to the Joint Applicants' application, the Commission on April 29, 2005 determined that the Joint Applicants had failed to demonstrate that they possess the financial, technical and managerial ability to

provide reasonable service and that the proposed transaction is consistent with the public interest. On May 23, 2005, the Joint Applicants petitioned for reconsideration.

Based upon our examination of the evidence included in the Joint Applicants' Petition for Reconsideration, we find that virtually all of this evidence existed prior to April 29, 2005 and with reasonable diligence Joint Applicants could have offered such evidence prior to the issuance of our Order of that date. Generally this Commission, when reviewing an application or petition for rehearing, will consider only additional evidence that could not with reasonable diligence have previously been presented. As no hearing was held prior to the entry of our Order and the Joint Applicants had limited opportunity to present their evidence, we find that their Petition should be granted and the evidence included in that Petition be carefully considered.

Having considered the evidence of record, including that contained in the Joint Applicants' Petition for Reconsideration, and being otherwise sufficiently advised, the Commission finds:

1. Sigma Gas is a corporation organized pursuant to KRS Chapter 271B.
2. Sigma Gas owns and operates facilities providing natural gas service to approximately 778 customers in Magoffin County, Kentucky, is a utility subject to Commission jurisdiction.
3. Ruth Conley Clemons (45 percent), Barkley Sturgill (45 percent) and Estill Branham (10 percent) own all outstanding shares of stock of Sigma Gas.
4. Joint Applicants have entered into agreements with the current shareholders of Sigma Gas to purchase their stock for a total amount of \$55,000.

5. Joint Applicants currently own a majority of the corporate stock of Dema Gas Company, Inc. ("Dema Gas"), a Kentucky corporation that owns and operates facilities providing natural gas service to approximately 16 customers in Knott County, Kentucky.<sup>1</sup> Joint Applicants have owned and operated Dema Gas since 1999.

6. Joint Applicants currently own a majority of the corporate stock of Cow Creek Gas, Inc. ("Cow Creek Gas"), a Kentucky corporation that owns and operates facilities providing natural gas service to approximately 51 customers in Floyd County, Kentucky.<sup>2</sup> Joint Applicants have owned and operated Cow Creek Gas since 1995.

7. The Commission has previously reviewed the individual qualifications of the Joint Applicants and found that they have the financial, technical and managerial abilities to provide reasonable utility service to the customers of Dema Gas<sup>3</sup> and Cow Creek Gas.<sup>4</sup>

8. Commission records do not reveal any evidence that either Dema Gas or Cow Creek Gas is being operated or managed in a manner inconsistent with or contrary to acceptable and reasonable utility practices.

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<sup>1</sup> Report of Dema Gas Company, Inc. to the Kentucky Public Service Commission for the Calendar Year Ended December 31, 2004 at 9.

<sup>2</sup> Report of Cow Creek Gas, Inc. to the Kentucky Public Service Commission for the Calendar Year Ended December 31, 2004 at 9.

<sup>3</sup> Case No. 1999-00232, Application of Jerome A. Kanney and Dennis L. Rohrer and Mary Leslie and Susan A. Branham for the Approval of the Acquisition of the Stock of Dema Gas Company, Inc. (Ky. PSC Aug. 3, 1999).

<sup>4</sup> Case No. 1994-00321, Application of Elizabeth Stephens Bierbauer, Attorney-In-Fact for D.C. Stephens, d/b/a Leslie Oil and Gas Company and Cow Creek Gas, Inc. for Approval of Sale to Cow Creek Gas Inc. Pursuant to KRS 278.020(4) and (5) (Ky. PSC Jan. 5, 1995).

9. Joint Applicants also own and operate Interstate Natural Gas Company ("Interstate Natural Gas"), a corporation that specializes in natural gas exploration drilling and production. Interstate Natural Gas currently operates over 340 natural gas wells in Kentucky and employs over 60 employees.

10. Mr. Kanney is a certified public accountant who operates his own accounting firm in Pikeville, Kentucky. He has previously been employed by several accounting firms. He is the recipient of several civic and business awards and holds or has previously held prominent leadership positions in several civic organizations.

11. Mr. Rohrer is an oil and gas production specialist with approximately 25 years of experience in the oil and gas industry. He is the recipient of several civic and business awards and holds or has previously held prominent leadership positions in several civic organizations.

12. Joint Applicants proposed no major changes in Sigma Gas's operations upon completion of the proposed transfer of control. They intend to retain the persons who currently perform bookkeeping services for Sigma Gas. Persons currently employed by Interstate Natural Gas would perform other management and operation functions. These persons have significant training and experience in most areas of gas pipeline operation and maintenance. Joint Applicants intend for Sigma Gas to continue to purchase its natural gas through its existing natural gas suppliers, but to develop other sources of supply that are at least as cost-effective as those currently used.

13. Joint Applicants represent that they have no current intentions to revise or adjust Sigma Gas's current rates during their first 12 months of operating Sigma Gas.<sup>5</sup>

14. Joint Applicants have procured an unsecured \$250,000 line of credit from Community Trust Bank, Inc. that they represent will be used to improve Sigma Gas operations upon Sigma Gas's emergence from bankruptcy.

15. On October 20, 2004, Sigma Gas voluntarily petitioned for relief under Chapter 7 of the United States Bankruptcy Code.<sup>6</sup> The U.S. Bankruptcy Court appointed a trustee to manage the property of the debtor's estate.

16. The appointed trustee has abandoned as part of debtor's estate Sigma Gas's gas distribution system.

17. Auxier Road Gas Company is currently operating Sigma Gas's gas distribution system under the terms of an agreement between the Governor's Office of Local Development ("GOLD"), Sigma Gas's only secured creditor, and Sigma Gas.<sup>7</sup>

18. If Sigma Gas continues to proceed with its petition for relief under Chapter 7 of the U.S. Bankruptcy Code, it will be liquidated upon the completion of bankruptcy proceedings and the discharge of its outstanding debts.

19. Joint Applicants represent that, should the proposed transfer of control occur, they will be required to negotiate and obtain agreements with GOLD and Sigma

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<sup>5</sup> Joint Applicants' Response to Commission Staff's Interrogatories and Requests for Production of Documents, Item 8.

<sup>6</sup> In Re: Sigma Gas Corporation, Case No. 04-71003 (Bankr. E.D. Ky. filed Oct. 20, 2004).

<sup>7</sup> In Re: Sigma Gas Corporation, Case No. 04-71003 (Bankr. E.D. Ky. filed Nov. 15, 2004).

Gas's unsecured creditors and to obtain U.S. Bankruptcy Court approval to convert Sigma Gas's current Chapter 7 petition to a Chapter 11 filing. As to their plans to satisfy the claims of unsecured creditors, Joint Applicants state only that they "will work with Sigma Gas's Bankruptcy Attorneys to satisfy the claims under Bankruptcy Law."<sup>8</sup>

20. Joint Applicants' proposed plan of action upon obtaining control of Sigma Gas places significant risks on Sigma Gas's customers in the form of delay and uncertainty. Joint Applicants' efforts will require considerable time and effort. Should Joint Applicants fail to negotiate successfully the necessary agreements with Sigma Gas's creditors and obtain necessary approval to convert Sigma Gas's bankruptcy proceeding to a Chapter 11 proceeding, the current bankruptcy proceedings will continue and Sigma Gas will be liquidated. Under such circumstances, the probability is great that the ownership and operational issues involving Sigma Gas's facilities will not be resolved prior to the 2005 winter heating season and that, as a result, Sigma Gas's current customers will not be able to adequately plan for their winter season heating needs.<sup>9</sup>

Based upon these findings, the Commission makes the following conclusions of law:

1. Sigma Gas is a utility that is subject to Commission jurisdiction. KRS 278.010(3)(f).

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<sup>8</sup> Joint Applicants' Response to Commission Staff's Interrogatories and Requests for Production of Documents, Item 6.

<sup>9</sup> Joint Applicants concede that Sigma Gas's bankruptcy proceedings have already caused significant disruption and uncertainty as to the utility's future. See Joint Applicants' Verified Petition for Reconsideration at 4.

2. Joint Applicants are not a utility and are therefore currently not subject to Commission regulation. KRS 278.010(3)(f).

3. Joint Applicants are “persons” for purposes of KRS Chapter 278. KRS 278.010(2).

4. KRS 278.020(5) provides that “[n]o person shall acquire or transfer ownership of, or control, or the right to control, any utility under the jurisdiction of the commission . . . without prior approval by the commission.” As Joint Applicants are persons and are acquiring ownership of Sigma Gas, this statute is applicable to and requires Commission approval of the proposed transfer.

5. KRS 278.020(6) provides that “[n]o individual, group, syndicate, general or limited partnership, association, corporation, joint stock company, trust, or other entity (an “acquirer”), whether or not organized under the laws of this state, shall acquire control, either directly or indirectly, of any utility furnishing utility service in this state, without having first obtained the approval of the commission.” As Joint Applicants are acquiring control of Sigma Gas through the acquisition of its corporate stock, this statute is applicable to and requires Commission approval of the proposed transfer.

6. Joint Applicants have the financial, technical, and managerial abilities to provide reasonable service to the present customers of Sigma Gas.

7. The proposed transfer is in accordance with law and for a proper purpose.

8. To demonstrate that a proposed transfer of control is in the public interest a party “must show that the proposed transfer will not adversely affect the existing level of utility service or rates or that any potentially adverse effects can be avoided through the Commission’s imposition of reasonable conditions on the acquiring party . . . [and] that

the proposed transfer is likely to benefit the public through improved service quality, enhanced service reliability, the availability of additional services, lower rates, or a reduction in utility expenses to provide present services. Such benefits, however, need not be immediate or readily quantifiable.”<sup>10</sup>

9. As the record indicates that significant risks are inherent in the proposed transfer, that the proposed transfer does not significantly reduce the probability that the liquidation of Sigma Gas will occur, that the proposed transfer will prolong the uncertainty over the ownership and operational status of Sigma Gas distribution system, that it will adversely affect the current customers of the Sigma Gas distribution system by increasing the uncertainty over the adequacy of their heating sources as the 2005 winter heating season approaches and that no condition that the Commission may impose can mitigate or reduce these risks or uncertainties, the proposed transfer is not consistent with the public interest.

IT IS THEREFORE ORDERED that:

1. Joint Applicants’ Petition for Reconsideration is granted.
2. That portion of the Commission’s Order of April 29, 2005 in which we denied the Joint Applicants’ Application as inconsistent with the public interest is affirmed.

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<sup>10</sup> Kentucky-American Water Company, Case No. 2002-00018 (Ky. PSC May 30, 2002) at 7 – 8.



Done at Frankfort, Kentucky, this 13<sup>th</sup> day of June, 2005.

By the Commission

ATTEST:

  
Executive Director